

# Coastal Zone Management Act

## What is the Coastal Zone Management Act?

The Coastal Zone Management Act (CZMA) of 1972 was enacted to assist coastal states, Great Lake states and U.S. territories manage, protect and preserve the natural resources, land and water uses of the coastal zone. This is accomplished by providing assistance and encouragement to coastal states to develop and implement Coastal Management Programs (CMP). The CZMA also requires Federal actions that are reasonably likely to directly affect the coastal zone to be consistent with the enforceable policies of the state or territory's CMP.

NOTE: The CZMA was reauthorized and amended in 1990. The current regulations at 15 CFR 930 do not reflect the 1990 amendments. The National Oceanic and Atmospheric Administration (NOAA) will be issuing revised regulations in 2000. This fact sheet describes the components of CMPs and general requirements for Federal Consistency, and is based on the original 1972 regulations.

NOAA's Federal Consistency Coordinator has cautioned that compliance should be based on the 1990 amendments to the CZMA pending the issuance of revised regulations. NOAA emphasized that Federal actions with reasonably foreseeable effects to the coastal zone must be consistent with the enforceable policies of the state or territory's CMP—not just actions that are reasonably likely to directly affect the coastal zone as directed in the 1972 Act. Therefore, before proceeding with an action that may affect a State's coastal use or resources, one should consult with their regional counsel to clarify the dichotomy between the 1990 amendments and 15 CFR 930.

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## What is the Coastal Zone?

CZMA Section 304 defines the term "coastal zone" as: "the coastal waters...and the adjacent shorelands...strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act... The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." Coastal zones vary greatly from state to state.

## What is a Coastal Management Program?

A CMP is a comprehensive state plan that establishes enforceable policies and standards to guide public and private uses of lands and waters in the coastal zone. A state's CMP must be approved by the NOAA Office of Ocean and Coastal Resource Management (OCRM). To be approved, a CMP must:

- (1) Identify and evaluate coastal resources recognized in the CZMA as requiring management or protection by the State;

- (2) Reexamine existing state policies or develop new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;
- (3) Determine specific use and special geographic areas that will be subject to the CMP;
- (4) Identify the inland and seaward areas subject to the CMP;
- (5) Provide special consideration for actions that are in "the national interest" (planning for and siting of facilities that meet more than local requirements);
- (6) Include legal and administrative authorities capable of implementing the program and ensuring compliance with the CMP;
- (7) Provide for public participation in permitting processes, consistency determinations, and other similar decisions;
- (8) Provide a mechanism to ensure that all state agencies will adhere to the program; and
- (9) Contain enforceable policies and mechanisms to implement the state's Coastal Nonpoint Pollution Control Program.

Once a state's CMP is approved, the state is eligible for Federal grants and technical assistance on coastal issues. As of August 1999, 28 States and five U.S. territories have approved CMPs. Indiana—one of the two remaining eligible states—is now developing a CMP for Federal approval. These CMPs protect more than 99 percent of the nation's 95,439 miles of oceanic and Great Lakes coastline.

The CZMA Reauthorization Amendments of 1990 required each state to develop a Coastal Nonpoint Pollution Control Program and incorporate it into its CMP. Under this program, states and territories with an approved CMP are required to develop and implement programs to control "non-point sources" of pollution impacting the coastal zone. (The Clean Water Act defines the term "point-source" as "any discernible, confined, and discrete conveyance" such as a pipe or conduit.) To date, 29 state programs have been conditionally approved.

The 1990 Amendments also established the Coastal Zone Enhancement Program that provides grant money for states and territories to make changes in areas considered to be of national significance. These areas are:

- Wetlands protection;
- Coastal hazards;
- Cumulative and secondary impacts of development;
- Public access to the coast;
- Special management planning;
- Ocean governance;
- Marine debris; and
- Government and energy facility siting.

## What is Federal Consistency?

Federal consistency is the CZMA requirement that all Federal agency actions directly affecting the coastal zone be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the state or territories' approved CMP. The regulations provide Federal

agencies with an exemption if they are legally prohibited from complying with the Federal consistency requirement. If a Federal agency asserts that compliance is prohibited, it must first provide the State CMP, in writing, with reasons why it is legally prohibited from complying with the State's policies. For consistency for Federal agency actions, see CZMA Section 307(c)(1), and NOAA's regulations at 15 CFR Part 930, Subpart C.

## When May a Consistency Determination be Needed?

If a Federal agency determines that its proposed action is reasonably likely to directly affect the coastal zone (including cumulative and secondary effects), it must ensure that the action is consistent with the enforceable policies of the approved CMP. The agency must submit a consistency determination to the State no later than 90 days before the start of the proposed action. The chart on page 3 presents the step-by-step process GSA follows for compliance with the CZMA. The following are situations when a consistency determination may be needed:

### Activities, either within or outside the coastal zone, directly affecting the coastal zone (15 CFR 930.34)

GSA is required to make a consistency determination whenever a proposed action is likely to directly affect the coastal uses or resources of a state with an approved CMP. It does not matter whether the activity takes place within or outside the coastal zone. A Federal activity is defined as "any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities" (15 CFR 930.31(a)). This definition does not include issuance of Federal licenses or permits (applicants for Federal licenses or permits must include in their application package a consistency certification in certain cases-15 CFR 930.(d).

### Development Projects (15 CFR 930.33)

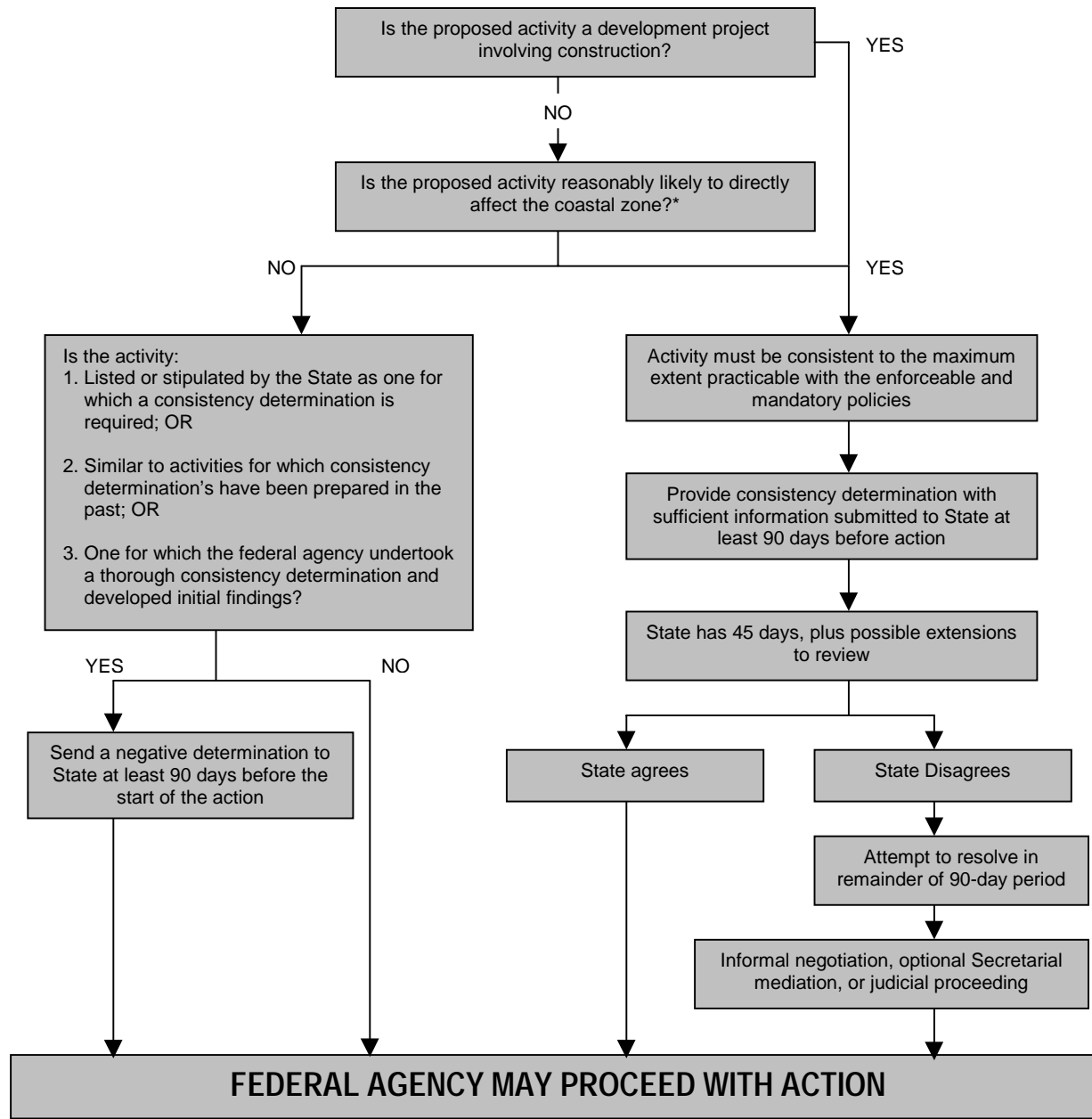
GSA is required to make a consistency determination for *any* development project involving construction that is located within the coastal zone of a state with an approved CMP, or for any such development project outside the coastal zone which directly affects coastal uses or resources. A Federal development project is defined as "a Federal activity involving the planing, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources" (15 CFR 930.31(b)).

### Federal activity listed in the state CMP (15 CFR 930.35(a))

Consistency regulations encourage states to list in their CMPs Federal activities which, in the opinion of the state, directly affect the coastal zone and, therefore, require a consistency determination. If GSA believes that an activity listed in the state's CMP will not directly affect the coastal zone, then GSA must send the state a "negative determination" no later than 90 days before the start of the activity. If GSA agrees that the

## CZMA Federal Consistency Process for Federal Activities

### 15 CFR Part 930, Subpart C



\* If the Federal agency is issuing a license or permit, the Federal agency must also consider indirect effects.

activity will directly affect the coastal zone, then it must do a consistency determination.

#### At the request of the state (15 CFR 930.35(b))

GSA may decide that a consistency determination is not required, even if the activity is listed in the state's CMP or the state requests that a consistency determination be made, if GSA believes the activity will not directly affect the coastal zone. In this case, GSA must send a "negative determination" to the state at the earliest possible time, but

no later than 90 days before the start of the activity, if the activity is either:

- identified by a State agency on its CMP list or through case-by-case monitoring,
- the same as or similar to activities for which consistency determinations have been prepared in the past, or
- found to have no direct effects on the coastal zone upon the Federal agency conducting a thorough consistency assessment and developing initial

findings.

An example of GSA's involvement in Federal Consistency occurred in 1992 during land acquisition and development of a 4.56 acre portion of the Fan Pier waterfront site in Boston, Massachusetts, for a new Federal Courthouse. Subsequent to the consultation process, the Massachusetts Coastal Zone Management Program's (MCZMP) coordinator concurred with GSA that purchase and development of the property was consistent with the enforceable policies of the State. The courthouse project received State government and community support due to changes in GSA's design that allow for public amenities as a result of the MCZMP consultation process.

## What are the Elements of a Consistency Determination?

The consistency determination or negative determination should follow the format specified in the State CMP, but generally includes:

- Summary determination;
- Background of project;
- Project description;
- Effects of the project on coastal uses and resources and socioeconomic impacts;
- Areas of environmental concern;
- Federal guidelines for the activities;
- Description of how the activity is consistent with applicable state coastal management program enforceable policies; and
- Conclusion stating that the activity is consistent with the CMP or had no reasonably foreseeable affect on the coastal zone.

## State response to the Consistency Determination

The State has 45 days (plus an optional 15-day extension) to respond to GSA's consistency determination. Any other extensions have to be mutually agreed to by both the State and the Federal agency. If the State does not respond within the 45-day timeframe and has not requested an extension, Federal agencies may "presume" State agency agreement and proceed with the proposed action. If the State concurs with the consistency determination, it will usually send a letter notifying the Federal agency to proceed with the action.

States may object to the Federal agency consistency determination. When objecting to consistency determinations, States are required to accompany their responses to the Federal agency along with the reasons for the disagreement and supporting information. The objection must include a description of how the activity will be inconsistent with specific elements of a CMP, and alternatives (if any), that if implemented by the Federal agency would allow the proposed activity to proceed in a manner consistent with the CMP. If a State's objection is based on insufficient information provided by the Federal agency, then the State must describe the nature of the information requested and why such information is needed for the State to complete its review of the Federal activity.

If the State objects, GSA should spend the time remaining before the start of the activity consulting with the State to reach an agreement on consistency. For example, if GSA submitted the determination 90 days prior to the start of work, and the State objects 30 days later, GSA has 60 days to resolve the differences.

## What Happens if State and Federal Agencies Disagree?

If consistency can not be resolved after working with the State CMP coordinator and making any appropriate changes to the proposed action, consistency can be mediated at the Federal level through NOAA's OCRM. Mediation is non-binding and either party may withdraw from the mediation process at any time. Differences may also be decided through judicial proceedings.

Such was the case during GSA's proposed disposal of a parcel of land along the Hudson River that had been seized by the U.S. Marshals Service under drug forfeiture statutes. The State of New York requested review of the sale for consistency with the New York Coastal Management Program (NYCMP) out of concern over compatibility with a greenway plan. *In this particular case*, GSA asserted that the sale did not warrant a consistency determination because the property came into federal ownership under the drug forfeiture statutes and, further, that acting as a "broker" is not a Federal activity under 15 CFR 930.31(a).

## For More Information

For more information, contact NEPA Call-In at (202) 208-6228, or the appropriate Federal, State or Territorial contact listed in the attached table.

**NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service. NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.**



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